

# **Firsthand Funds 403(b)(7) Custodial Account Agreement**

## **Important Information**

**Effective January 1, 2009, Firsthand Funds and BNY Mellon Investment Servicing Trust Company no longer accept contributions, rollovers or transfers into a 403(b) custodial account. Your existing Account retains its original status, growing tax-deferred until retirement.**

**This Custodial Agreement is effective January 1, 2009, except as otherwise specified herein and supersedes all prior agreements.**

### **STATE UNCLAIMED PROPERTY LAW DISCLOSURE**

The assets in your custodial account are subject to state unclaimed property laws which provide that if no activity occurs in your account within the time period specified by the particular state law, your assets must be transferred to the appropriate state. We are required by law to advise you that your assets may be transferred to an appropriate state in compliance with these state laws.

### **SPOUSAL PROVISIONS FOR SAME SEX COUPLES**

Effective September 16, 2013, same-sex couples who are legally or lawfully married in a state or country that recognizes same-sex marriage will be treated as a "spouse" for federal tax purposes. The IRS will look to state or foreign law to validate the marriage. Same-sex couples who are in a civil union or domestic partnership will not be afforded the same federal tax treatment.

### **SPOUSAL BENEFICIARY DESIGNATION IN THE EVENT OF DIVORCE**

In the event of a divorce or legal separation, the Custodian will not automatically remove the former spouse as the designated beneficiary without court appointment. If your life circumstances have changed, we suggest that you submit a 403(b) Beneficiary Designation Change Form. The current beneficiary designation on file with the Custodian will be deemed valid and in full force until such date as the Custodian receives a signed 403(b) Beneficiary Designation Change Form, in good order.

## Questions and Answers Regarding Your 403(b)(7) Custodial Account

### **Q. Can I withdraw from my 403(b)(7) prior to age 59 1/2?**

Generally you may not withdraw from your 403(b)(7) plan prior to age 59 1/2 except for the following reasons:

- ◆ Death
- ◆ Disability
- ◆ Severance from Employment
- ◆ Financial Hardship, if available under the Custodial Agreement

Also, a 10% penalty for withdrawals made prior to age 59 1/2 will apply unless the withdrawal was made as a result of:

- ◆ Death
- ◆ Disability defined under §72(m)(7) of the Code
- ◆ Retired, after attaining age 55
- ◆ Installment distributions over your life expectancy or the joint life expectancies of you and your designated beneficiary, after separation from service
- ◆ Certain large medical expenses
- ◆ Qualified Domestic Relations Order
- ◆ IRS Levy

### **Q. How may I take distributions?**

Distributions may be taken in a single sum payment, or in installments such as annual, monthly or quarterly payments. All distribution requests must be made on a 403(b) distribution form. Letters of instruction are not acceptable.

### **Q. When must I withdraw from my 403(b)(7)?**

The law requires that you either receive the entire balance in your 403(b)(7) or begin to receive annual distributions from your 403(b)(7) by the April 1st following the later of the calendar year you attain age 70 1/2, or retire.

Since the rules governing the distribution requirements at age 70 1/2 and retirement are complex, you should consult with your tax advisor to determine your minimum required distributions beginning at age 70 1/2 or retirement.

### **Q. What happens if I die?**

In the event of your death, the amount in your 403(b)(7) Account is paid to your beneficiary(ies) which you designated prior to your death.

If you did not name a beneficiary or you have no living beneficiaries at the time of your death, your Account will be distributed to your surviving spouse; and if no spouse, then your estate.

Your beneficiary will generally have 5 years from the date of your death to receive the funds in your 403(b)(7). However, if your beneficiary begins distributions within one year after your death, payments may be made over a period not to exceed your beneficiary's life expectancy.

There are additional choices that apply to payments to your surviving spouse, including delaying distributions until you would have attained age 70 1/2. Since the rules governing death distributions are complex, your beneficiary should consult with a tax advisor prior to selecting a method of distribution.

### **Q. How will I be taxed on the income I receive at retirement?**

Distributions will be treated as ordinary income for the year in which the funds are distributed. If payments are taken in installments, only the amount withdrawn is taxed. The remainder of the Account will continue to grow tax-deferred until withdrawn.

### **Q. Can I rollover from my current 403(b)(7) Custodial Account to an IRA or another 403(b)(7)?**

Yes, if you are eligible to receive a distribution from your 403(b)(7) account, you may elect to roll your distribution into an IRA or other 403(b) program. If you agree to "directly rollover" into an IRA or eligible 403(b) program, the custodian will forward the proceeds of your 403(b)(7) Account directly to the custodian of your new IRA or 403(b) Account and you can avoid federal income tax withholding on the amount rolled over. If you do not "directly rollover", the taxable amount distributed from your 403(b)(7) Account will be subject to a mandatory 20% withholding for federal income tax purposes. Due to the complex rules involved, you should consult with your personal tax advisor before you make a decision.

### **Q. When does income tax withholding apply?**

Federal Income Tax Withholding applies only when a distribution occurs or is deemed to occur. Therefore in the case of a transfer or direct rollover, withholding does not apply.

If you receive an allowable distribution (which is eligible to be rolled over to an IRA or another 403(b)) from your 403(b)(7) account, generally 20% mandatory withholding will apply to the distribution.

For example, if your distribution is \$10,000, only \$8,000 will be paid to you. The \$2,000 difference will be sent to the IRS as income tax withholding. Within 60 days of receiving the \$8,000, you may roll over the entire \$10,000 to an IRA or another 403(b). To do this, you roll over the \$8,000 you received, and you will have to find \$2,000 from other sources (your savings, a loan, etc.). In this case, the entire \$10,000 is not taxed until you take it out of the IRA or 403(b). You will still report the \$2,000 as tax withheld, and it will be credited against any income tax you owe for the year of the distribution.

If you receive a distribution which is not eligible for rollover (for example, if you receive a death distribution and you are a non-spouse beneficiary; or you are receiving your 70½ required minimum distribution), the 20% mandatory withholding does not apply. In these cases special voluntary withholding rules apply.

Due to the complex rules involved for distributions, you should consult with your tax advisor before you act.

# 403(b)(7)

## Tax-sheltered Investments for Employees of Public Schools and 501(c) Tax-Exempt Organizations

### SECTION 1. Definitions

- 1.1** Administrator: The person, committee, or other organization appointed by the Employer in the Employer's 403(b) Plan document to administer the Plan. If no such Entity is named, the Administrator shall be the Employer.
- 1.2** After-tax Employee Contributions: Any contribution made to the Plan by a Participant that is included in the Participant's gross income in the year in which made and that is maintained under a separate account or separates accounting to which earnings and losses are allocated.
- 1.3** Agreement: This instrument setting forth the terms and conditions of the Sponsor's Custodial Account Agreement as set forth hereafter.
- 1.4** Alternate Payee: A spouse, former spouse, child or other dependent of a Participant who is assigned under a qualified domestic relations order (as defined in §414(p) of the Code) a right to receive all or a portion of the benefits payable with respect to a Participant.
- 1.5** Application: The written application which incorporates this Agreement signed by the Employee and accepted by the Custodian and serves to establish a Section 403(b)(7) Custodial Account for the Employee.
- 1.6** Beneficiary: Except as provided in section 5.6, a person designated in writing by a Participant to receive a benefit under this Agreement in the event of such Participant's death.
- 1.7** Code or IRC: The Internal Revenue Code of 1986, as amended, including any regulations issued thereunder.
- 1.8** Custodial Account or Account: The individual account(s) established and maintained under this Agreement for the Employee pursuant to Section 403(b)(7) of the Code.
- 1.9** Custodian: BNY Mellon Investment Servicing Trust Company.
- 1.10** Disabled: With respect to a Participant, that he is unable to engage in any substantial gainful activity by reason of a medically determinable physical or medical impairment which can be expected to result in death or to be of long-continued and indefinite duration, as defined under §72(m)(7) of the Code.
- 1.11** EGTRRA: The Economic Growth and Tax Relief Reconciliation Act of 2001, including any regulations or other guidance issued thereunder.
- 1.12** Elective Deferrals: For any taxable year of an Employee, Elective Deferrals are the sum of:
- a) any salary reduction contributions under a qualified cash or deferred arrangement as defined in Section 401(k) of the Code, to the extent not includible in income under Section 402(a)(8) of the Code;
  - b) any salary reduction contributions to a simplified employee pension plan as defined in Section 408(k) of the Code, to the extent not includible in income under Section 402(h)(1)(B) of the Code.
  - c) any contributions made pursuant to a Salary Reduction Agreement used to purchase an annuity contract or Custodial Account under Section 403(b) of the Code.
  - d) any salary reduction contributions made to a SIMPLE IRA Plan described in Section 408(p) of the Code.
- 1.13** Employee: Any person regularly employed by the Employer. Neither "leased employees" within the meaning of Section 414(n) or (o) of the Code, nor independent contractors shall be considered to be Employees for the purposes of this Agreement.
- 1.14** Employer: Any organization that is (i) described in Section 501(c)(3) of the Code and exempt from tax under Section 501(a) of the Code; or (ii) an educational organization described in Section 170(b)(1)(A)(ii) of the Code which is a State, political subdivision of a State, or any agency or instrumentality of any one or more of the foregoing; or (iii) a church or convention, or association of churches that is exempt from tax under Section 501 of the Code; or by a church related organization described in Section 414(e)(3) of the Code.
- 1.15** ERISA: The Employee Retirement Income Security Act of 1974, as amended, including any regulations thereunder.
- 1.16** Excess Deferral: For any taxable year, that portion of an Employee's Elective Deferrals that exceeds the limits of Section 402(g) of the Code.
- 1.17** Financial Hardship: With respect to a Participant or the Participant's Beneficiary, a present or pending financial need resulting from unusual costs or expenses, such as unusual medical expenses, higher educational expenses, purchase of a residence, funeral expenses of certain family members, the need to prevent eviction from the Participant's primary residence and the repair of the Participant's primary residence due to a casualty or disaster. Financial Hardship shall be determined in accordance with Section 403(b) of the Code and the regulations thereunder, and the Employer's or Custodian's hardship policy and procedures, if applicable. In processing any withdrawal request, the Custodian shall be fully entitled to rely on the instructions furnished or certifications made by the Employee, and by the Employer or Plan Administrator, as applicable, and shall be under no duty to make any inquiry or investigation with respect thereto.

- 1.18** 403(b) Plan: The document maintained by the Employer which shall govern eligibility, applicable contribution limits, benefits, distributions and the approved Vendors and Investment Companies. If there is a conflict between this Custodial Agreement and the 403(b) Plan, the 403(b) Plan shall govern. This Custodial Agreement shall not be considered a part of the 403(b) Plan, whether or not the Plan Document incorporates this Custodial Agreement by reference. Effective January 1, 2009, the Employer shall be solely responsible for ensuring that the Plan Document (including this Custodial Agreement in the event it is deemed to be part of the Plan Document) constitutes a written plan that, in form and operation, satisfies the requirements of Section 403(b).
- 1.19** Includible Compensation: The Participant's wages, salaries or other remuneration received for personal services actually rendered in the course of employment with the Employer and any other amounts treated as compensation under Section 415 of the Code. Such Includible Compensation shall be determined under the most recent year of service pursuant to Section 403(b)(4) IRC and which precedes the taxable year by no more than five years. For taxable years beginning after 12/31/97, such term includes any elective deferral described in Section 402(g)(3) and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Sections 125, 132(f)(4) or 457 IRC.
- 1.20** Instruction: An "Instruction" to the Custodian is any oral, written or electronic direction given in a form and manner required or accepted by the Custodian. The Custodian may require that any Instruction be in writing or in an electronic format, and may recognize standing requests, directions, or requisitions as Instructions. Upon application by the Participant and upon approval by the Custodian, the Custodian will accept non-written Instructions from the Employer or Sponsor subject to immediate confirmation of such Instructions by email or in writing.
- 1.21** Investment Company: Any "Regulated Investment Company" within the meaning of Section 851(a) of the Code that is selected from time to time by the Sponsor.
- 1.22** Participant: An individual who is, or has been, employed by the Employer, who has been designated by the Employer as a Participant, and who contracts in writing with the Employer for contributions hereto.
- 1.23** PPA: The Pension Protection Act of 2006, including any regulations or other guidance issued thereunder.
- 1.24** Salary Reduction Agreement: A binding contract executed by the Employee and the Employer authorizing a reduction in the Employee's future Compensation or a waiver of increasing future Compensation provided that such amounts shall be contributed to the Employee's Custodial Account by the Employer.
- 1.25** Sponsor: The entity named in the Account Application.
- 1.26** Vendor: The provider of an Annuity Contract or Custodial Account. The Vendors selected by the Employer shall be specified in the Employer's 403(b) Plan. Such Plan shall indicate the approved Vendors with respect to on-going contributions as well as those Vendors available for transfers and exchanges.

## **SECTION 2. Maintaining the Custodial Account**

The Custodian shall maintain the Custodial Account hold and administer, in accordance with the terms hereof, any gain or income from the investment thereof. The Employee shall notify the Custodian in writing of any change in name, address, or Social Security Number.

## **SECTION 3. Contributions - Important Information**

**Effective January 1, 2009, Firsthand Funds and BNY Mellon Investment Servicing Trust Company no longer accept contributions, rollovers or transfers into a 403(b) custodial account. Your existing Account retains its original status, growing tax-deferred until retirement. This Custodial Agreement is effective January 1, 2009, except as otherwise specified herein and supersedes all prior agreements.**

- 3.1** Contributions to the Account: N/A
- 3.2** Make-up Contributions for Qualified Military Service: N/A
- 3.3** Plan-to-Plan Transfer and Exchange Contributions: N/A
- 3.4** Allowance of Catch-Up Contributions: N/A
- 3.5** Employer Contributions: N/A
- 3.6** Direct Rollovers into this Custodial Account: Effective as of the close of business December 31, 2008 the Custodian shall not accept rollovers on or after January 1, 2009.
- (a) **Rollovers from Other Plans**: N/A
- (b) **Participant Rollover Contributions from Other Employer Plans**: N/A.
- (c) **Participant Rollover Contributions from IRAs**: N/A

- 3.7** Return of Excess Deferral: Unless the Employer's 403(b) Plan provides a different method and date for notification of an Excess Deferral, if a Participant makes an Excess Deferral to the Custodial Account for any tax year, such Participant may give written notice to the Sponsor of the amount of the Excess Deferral no later than March 1 following the close of that tax year. If the Participant gives such written, timely notice to the Sponsor, the Custodian may distribute to the Participant, the amount of the Excess Deferral, together with income attributable thereto, by April 15th of the following taxable year.
- 3.8** Return of Excess 415 Contributions: Excess 415 Contributions shall be corrected in the method or methods as outlined in the Employer 403(b) Plan. If permitted under the Employer's 403(b) Plan, and if as a result of a reasonable error in estimating a Participant's annual compensation, a reasonable error in determining the amount of elective deferrals under Section 402(g)(3) of the Code, or any other circumstances that the Internal Revenue Service shall determine meets the requirements of Section 415 of the Internal Revenue Code and the regulations thereunder, an excess annual addition occurs in any Participant's account, a distribution is permitted from this Custodial Account of such excess.
- 3.9** Liability for Excess Amounts: The Custodian and the Sponsor shall not have any duty to determine whether an Excess Deferral or contribution in excess of the limitations under Sections 403(b), 402(g) or 415 of the Code ("Excess Amounts") has been made by or on behalf of the Participant. The Custodian and the Sponsor shall not be held liable by the Participant or any other person(s), trusts or other entity for failing to determine whether an Excess Deferral or Excess Amounts was made or for failing to distribute an Excess Deferral absent the request of the Participant. The Custodian and the Sponsor shall not be liable to the Participant or any other person(s), trusts or entity for taxes or other penalties incurred as a result of the Excess Deferral or Excess Amounts (including any income attributable thereto) or as a result of a distribution of an Excess Deferral and any income attributable thereto.

#### **SECTION 4. Investment of Account Assets**

- 4.1** Investment of Contributions: Effective as of the close of business December 31, 2008 the Custodian shall not accept cash contributions or other investments on or after January 1, 2009.
- 4.2** Investment of Gains and Dividends: All dividends and capital gains distributions on shares held in the Participant's Account shall be credited to the Participant Account and shall be reinvested in such shares in accordance with the Investment Company's then current prospectus.
- 4.3** Voting and Other Action: All shares of the Investment Company acquired by the Custodian pursuant to the Agreement shall be held in the name of the Custodian for the benefit of the Employee. The Custodian or the Sponsor shall cause to be delivered to the Participant all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to shares held in the Custodial Account. The Custodian shall not vote any such shares except in accordance with written instructions received from the Employee.
- 4.4** Identification of Accounts: All shares of the Investment Company acquired by the Custodian shall be held in the name of the Custodian or its nominee for the benefit of the Participant (or the Beneficiary after the Participant's death). The Account will not be joined for rights of accumulation with Accounts of other Employees of the same Employer.

#### **SECTION 5. Distributions from the Custodial Account**

- 5.1** Request for Distribution: Distribution from the Custodial Account shall be made by the Custodian only to a Participant, his designated Beneficiary or Alternate Payee, and no purported sale, transfer, pledge or assignment by the Participant, his spouse or Beneficiary of all or any part of an interest in the Custodial Account shall be recognized by the Custodian except as provided in section 5.6. The interest of a Participant, his spouse or Beneficiary in the Custodial Account shall not be subject to the debts, contracts, liabilities, engagements or torts of such person or to attachment or legal process against such person, except as permitted or required by law.
- 5.2** Limitations on Distributions: The Custodian shall distribute, or commence distribution of, pursuant to the Participant's (or the Participant's Beneficiary in the case of the Participant's death) written direction, the balance credited to a Participant's Account upon receipt of evidence satisfactory to it that one or more of the following events have occurred:
- (a) the Participant becomes Disabled;
  - (b) the Participant has a severance from service with the Employer;
  - (c) the Participant dies;
  - (d) the Participant attains age 59 1/2; or
  - (e) the Participant encounters a Financial Hardship.

Notwithstanding the foregoing, any amounts contributed to a rollover account shall be available for distribution at any time and shall not be based on the distributable events listed above.

- 5.3** Timing of Distributions:
- (a) Distribution from the Custodial Account shall commence within 30 days after the Participant notifies the Custodian of his entitlement to distributions, unless the Participant makes a prior election to defer distribution or the commencement of distribution to a subsequent date which is not later than the end of the tax year in which the Participant attains age 70 1/2, unless a later date is permitted by the Code, the regulations issued thereunder, or other Internal Revenue Service pronouncements. Such election shall be made by written notice filed with the Custodian. Notwithstanding this provision, the Custodian shall not be responsible for making any distribution until such time as it has received proper written notification from the Participant, his surviving spouse or Beneficiary of the occurrence of an event described in section 5.2.
  - (b) Unless the Employer's 403(b) Plan indicates otherwise, the Required Beginning Date shall mean the April 1st following the later of the year the Participant attains age 70 1/2 or the year in which the participant retires.

**5.4** Form of Distribution: Unless otherwise required under ERISA, distribution shall be made in cash or in kind in any one or more of the following ways:

- (a) in a single payment; or
- (b) in installments for a period certain not to exceed the life expectancy of the Participant or the Participant's Beneficiary or the joint lives and last survivor expectancies of the Participant and the Participant's designated Beneficiary; or
- (c) in a combination of (a) and (b).

**5.5** Designation of Beneficiary:

- (a) Each Participant may, by written notice filed with the Custodian and in a form acceptable to the Custodian, designate a Beneficiary or Beneficiaries to receive the Participant's benefit at the Participant's death. Such designation may be changed or revised from time to time by written instrument filed with the Custodian. If no designation has been made, or if no beneficiary is living at the time of a Participant's death, his Beneficiary shall be: (1) his surviving spouse; but if he has no surviving spouse; then (2) his estate.
- (b) If the Custodian permits, in the event of the Participant's death, any beneficiary may name a subsequent beneficiary(ies) to receive the balance of the Account to which such beneficiary is entitled upon the death of the original beneficiary by filing a Subsequent Beneficiary Designation Form acceptable to and filed with the Custodian. Payments to such subsequent beneficiary(ies) shall be distributed in accordance with the payment schedule applicable to the original beneficiary. In no event can any subsequent beneficiary be treated as a designated beneficiary of the Participant. The preceding sentence shall not apply with respect to the subsequent beneficiary(ies) of an original spouse beneficiary where the Participant dies before his or her required beginning date. If the balance of the Account has not been completely distributed to the original beneficiary and such beneficiary has not named a subsequent beneficiary or no named subsequent beneficiary is living on the date of the original beneficiary's death, such balance shall be payable to the estate of the original beneficiary.

**5.6** Distribution under a Qualified Domestic Relations Order:

- (a) Distributions of all or any part of a Participant's Account pursuant to the provisions of a qualified domestic relations order (QDRO) as defined in Section 414(p) of the Code is specifically authorized.
- (b) The earliest retirement age shall be the earlier of:
  - (1) The earliest date benefits are payable under the Plan to the Participant; or
  - (2) the later of the date the Participant attains age 50 or the date on which the Participant could obtain a distribution from the Plan if the Participant had separated from service.
- (c) The alternate payee may receive a payment of benefits under this Plan in any optional form of benefit available pursuant to section 5.4.
- (d) The alternate payee may receive a payment of a benefit under this Plan prior to the earliest retirement age as defined in section 5.6(b) if the QDRO specifically provides for such earlier payment. If the present value of the payment exceeds \$5,000, the alternate payee must consent in writing to such distribution.

**5.7** Plan-to-Plan Transfers from this Custodial Account

The Participant may cause the transfer (or exchange), in cash, of all or any portion of the balance credited to a Participant's Account from this Custodial Account directly to the custodian of another Custodial Account qualified under Section 403(b)(7) of the Code or to an insurance company designated by the Participant for the purchase, for the benefit of the Participant, of an annuity contract qualified under Section 403(b) of the Code if the Administrator, or Vendor, if applicable certifies that the transaction meets the requirements for a tax-free transfer or exchange under section 1.403(b)-10(b) of the Treasury regulations, and any other applicable laws or rulings of the Internal Revenue Service. Plan-to-Plan Transfer or Exchange assets once received by the new custodian or issuer shall be applied to the original source from such transferred or exchanged assets, on behalf of such Participant. If it is not possible to determine the source of the funds being transferred or involved in an exchange then instructions shall accompany the assets for such assets to be placed in a restricted source under the new Custodial Account (or annuity) and will be subject to the strictest distributable events with respect to sources under the new Custodial Account or annuity.

**5.8** Direct Rollovers :

- (a) This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this Custodial Account or the Employer's 403(b) Plan to the contrary that would otherwise limit a distributee's election under this section, a Distributee may elect, at the time and in the manner prescribed by the Custodian, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover.
- (b) Definitions:
  - (i) **Eligible Rollover Distributions:** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution described in Treasury Notice 2000-32 (and subsequent rulings) received after 12-31-99, the portion of any other distribution(s) that is not includible in gross income; and any other distribution(s) that is reasonably expected to total less than \$200 during the year.
  - (ii) **Eligible Retirement Plan:**
    - (A) An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a tax-sheltered annuity plan described in Section 403(b) of the Code, or a Custodial Account described in Section 403(b)(7) of the Code, that accepts the distributee's Eligible Rollover Distribution. However, in the case of an

Eligible Rollover Distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

- (B) For distributions made after December 31, 2001, and for purposes of the Direct Rollover provisions in this section of the Custodial Agreement, an Eligible Retirement Plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Custodial Agreement. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a Qualified Domestic Relation Order, as defined in Section 414(p) of the Code.
- (C) Effective for distributions made on or after January 1, 2008, a "qualified rollover contribution" as described in Section 408A(e) of the Code may be made from the Account to a Roth IRA in a direct rollover subject to the rules and provisions set forth in Code section 408A(e).
- (iii) **Distributee:** A Distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (iv) **Direct Rollover:** A Direct Rollover is a payment by the Plan to the Eligible Retirement Program specified by the Distributee.
- (v) **Modification of Definition of Eligible Rollover Distribution to Exclude Hardship Distributions:** For purposes of the direct rollover provisions in section 3.7 of the Custodial Agreement, any amount that is distributed on account of hardship shall not be an Eligible Rollover Distribution and the distributee may not elect to have any portion of such a distribution paid directly to an Eligible Retirement Plan.
- (vi) **Modification of Definition of Eligible Rollover Distribution to Include After-Tax Employee Contributions:** For purposes of the Direct Rollover provisions in this section of the Custodial Agreement, a portion of a distribution shall not fail to be an Eligible Rollover distribution merely because the portion consists of After-Tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately Account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

#### 5.09 Beneficiary Direct Rollover:

If elected under the Employer's 403(b) Plan and effective for distributions made after December 31, 2006, a direct trustee-to-trustee transfer of any portion of a distribution from an eligible retirement plan may be made to an individual retirement plan described in section 408(a) or (b) (an "IRA") that is established for the purpose of receiving the distribution on behalf of a designated beneficiary who is a Beneficiary (whether a spouse or nonspouse Beneficiary), and such transfer shall be treated as a direct rollover of an eligible rollover distribution for purposes of section 402(c). If elected under the Employer's 403(b) Plan and effective for distributions made on or after January 1, 2008, a "qualified rollover contribution" as described in Section 408A(e) of the Code may be made from the Account to a Roth IRA in a direct rollover subject to the rules and provisions set forth in Code section 408A(e).

#### 5.10 Transfers to State Defined Benefit Plan

- (a) A Participant may, if the conditions outlined in section 5.10(b) are satisfied and if permitted under the Employer's 403(b) Plan, transfer amounts from this Custodial Account to an eligible governmental defined benefit plan of a state. A transfer under this section is not treated as a distribution and therefore may be made prior to severance from employment or any other distributable event.
- (b) A transfer may be made under this Plan if:
  - (1) the defined benefit plan of the state provides for the acceptance of such transferred amounts; and
  - (2) the transferred amount is for either:
    - (i) the purchase of permissive past service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan; or
    - (ii) a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.
- (c) Under Section 821 of PPA, the term permissive service credit may include service credit for periods for which there is no performance of service, and may include service credited in order to provide an increased benefit for service credit which a Participant is receiving under the defined benefit plans.

## SECTION 6. Required Minimum Distributions

#### 6.1 1987 Proposed Regulations - Minimum Distribution Requirements:

- (a) **In General:** All distributions required hereunder shall be determined and made in accordance with the proposed regulations under Section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the proposed regulations.
- (b) **Pre-1987 Account Balance or Bifurcated Account:** If the Custodian maintains a record of the Participant's balance as of December 31, 1986 ("the pre-1987 account"). Such pre-1987 account balance will not be required to be distributed until the end of the calendar year in which the Participant attains age 75.

- (c) **Death Prior to Distribution:** If the Participant dies before he has started to withdraw installments from his Account, the entire interest in the Participant's Account shall be distributed within five (5) years after the death of the Participant. However, if any portion of the Participant's interest is payable to a designated Beneficiary (within the meaning of Section 401(a)(9)(E) of the Code), then, at the Beneficiary's election, distributions may be made over the life expectancy of such designated Beneficiary. Such distributions must begin by December 31 of the calendar year following the calendar year of the Participant's death. However, if the sole designated Beneficiary is the surviving spouse of the Participant, distributions need not commence until the later of December 31 of the calendar year in which the Participant would have attained age 70 1/2, or December 31 of the calendar year immediately following the calendar year in which Participant died.

For purposes of this section 5.7, payments will be calculated by use of the return multiplies specified in Section 1.72-9 of the Income Tax Regulations. Life expectancy of a surviving spouse may be recalculated annually. Life expectancy of any non-spouse Beneficiary will be calculated at the time of the first payment without further recalculation.

- (d) **Death After Distributions Have Commenced:** If the Participant was withdrawing his interest in installments over a fixed period, the remaining installments will be continued to the Beneficiary at least as rapidly as under the method of distribution selected prior to death.
- (e) **Required Distribution Default Provisions:**
- (1) Unless otherwise elected by the Participant (or spouse, if applicable) by the time distributions are required to begin, life expectancies shall not be recalculated annually. Such election shall be irrevocable as to the Participant (or spouse) and shall apply to all subsequent years. The life expectancy of a nonspouse beneficiary may not be recalculated.
  - (2) If the Participant does not choose any of the distribution methods under this section 6.1 by such Participant's Required Beginning Date, distribution shall be made to the Participant based on such Participant's nonrecalculated Single Life expectancy.
  - (3) All requests for distributions shall be made on a pro-rata basis among the applicable Funds unless directed otherwise by the Participant.

## 6.2 Application of 2002 Final Regulations

### (a) **General Rules:**

- (i) **Effective Date:** Unless an earlier effective date is used by the Custodian, the provisions of this Section 6.2 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (ii) **Coordination with Minimum Distribution Requirements Previously in Effect:** If the Custodian uses an effective date of this Section 6.2 that is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this Section 6.3 will be determined as follows. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this Section 6.2 equals or exceeds the required minimum distributions determined under this Section 6.2, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this Section 6.2 is less than the amount determined under this Section 6.2, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Section 6.2.
- (iii) **Precedence:** The requirements of this Section 6.2 will take precedence over any inconsistent provisions of the plan.
- (iv) **Requirements of Treasury Regulations Incorporated:** All distributions required under this Section 6.2 will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

### (b) **Time and Manner of Distribution.**

- (i) **Required Beginning Date:** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (ii) **Death of Participant Before Distributions Begin:** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (A) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in section 6.2(b)(ii)(E) below, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
  - (B) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided in section 6.2(b)(ii)(E), distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (C) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (D) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this section 6.2(b)(ii), other than section 6.2(b)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of this sections 6.2(b)(ii) and section 6.2(d), unless section 6.2(b)(ii)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If section 6.2(b)(ii)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 6.2(b)(ii)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before



the date distributions are required to begin to the surviving spouse under section 6.2(b)(ii)(A)), the date distributions are considered to begin is the date distributions actually commence.

(E) Notwithstanding sections 6.2(b)(ii) and 6.2(d)(ii), Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 6.2(b)(ii) and 6.2(d)(ii) of the plan applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under section 6.2(b)(ii) of the plan, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 6.2(b)(ii) and 6.2(d)(ii) of the plan and, if applicable, the elections in section 6.2(b) above.

(iii) **Forms of Distribution:** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 6.2(c) and 6.2(d) of this section 6.2. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.

(c) **Required Minimum Distributions During Participant's Lifetime**

(i) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(A) the quotient obtained by dividing the participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(B) if the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(ii) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death:** Required minimum distributions will be determined under this section 6.3(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) **Required Minimum Distributions After Participant's Death**

(i) **Death On or After Date Distributions Begin:**

(A) **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

(I) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(II) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(III) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) **Death Before Date Distributions Begin:**

(A) **Participant Survived by Designated Beneficiary.** Except as provided in the adoption agreement, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in section 6.2(d)(i).

(B) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (C) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 6.2(b)(ii)(A), this section 6.2(d)(ii) will apply as if the surviving spouse were the Participant.
- (D) A Designated Beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

(e) **Definitions.**

- (i) **Designated Beneficiary.** The individual who is designated as the Beneficiary under section 5.5 of this Custodial Agreement and is the Designated Beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (ii) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 6.2(b)(ii). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (iii) **Life expectancy.** Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- (iv) **Participant's Account balance.** The Account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (v) **Required Beginning Date.** The date specified in section 5.3 of the plan.

## **SECTION 7. Nonforfeitability**

- 7.1** Nonforfeitability: A Participant's interest in the balance of his Account attributable to his/her salary reduction contributions shall at all times be nonforfeitable.

## **SECTION 8. Loans to Participants**

- 8.1** Loans are not offered.

## **SECTION 9. The Custodian, Sponsor and Administrator**

- 9.1** All notices, requests and other communications to the Custodian by the Employer or any Participant (or his spouse or Beneficiary) shall be in writing and in such form as the Custodian may from time to time prescribe. The Custodian shall be entitled to rely on any such instruments believed by it to be genuine.
- 9.2** The Custodian shall have the power and authority in the administration of the Custodial Account to do all acts, to execute and deliver all instruments and to exercise for the benefit of the Participants and their beneficiaries any and all powers which would be lawful were it in its own right the actual owner of the property held.
- 9.3** Custodian's (or Sponsor's or Administrator's, if applicable) Fees and Expenses of the Account: In consideration of its services hereunder, the Custodian (or Sponsor or Administrator, if applicable) will be entitled to receive compensation for its services provided hereunder as may be agreed upon from time to time, including but not limited to annual maintenance fees. The Custodian will be entitled to reimbursement for all reasonable and necessary costs, expenses, and disbursements incurred by it in the performance of such services, including, without limitation, attorneys' fees. All fees, taxes and expenses charged to a Custodial Account may be collected by the Custodian from the amount of any contribution, transfer or dividend credited or to be credited to an Account or by redeeming Investment Company shares credited to that Custodial Account. Such fees, if any, shall be disclosed on an attachment hereto. Any income taxes or other taxes of any kind whatsoever that may be levied or assessed upon or in respect of the Account shall be paid from the assets of the Account. Any transfer taxes, investment fees or similar expenses incurred in connection with the investment of the assets of the Account, and all other administrative expenses incurred by the Custodian (or Sponsor or Administrator, if applicable) in the performance of its duties including fees for legal services rendered to the Custodian (or Sponsor or Administrator, if applicable) shall similarly be paid from the assets of the Custodial Account.
- 9.4** The Custodian may resign at any time upon 30 days notice in writing to the Sponsor (or Administrator, if applicable) and Participant (unless such notice is waived) and may be removed by the Sponsor (or Administrator, if applicable) and Participant at any time upon 30 days notice in writing to the Custodian. Upon such resignation or removal, the Participant or Sponsor (or Administrator, if applicable) shall appoint a successor custodian, which successor shall be a "bank" as defined in Section 401(f)(2) of the Code. If within 30 days after the Custodian's resignation or removal, the Participant or Sponsor has not appointed a qualified successor custodian which has accepted such appointment, the Custodian may appoint, unless it elects to terminate the Account, such successor itself. Upon receipt by the Custodian of written acceptance of such appointment by the successor custodian, the Custodian shall transfer and pay over to such successor the assets of the Custodial Account and all records pertaining thereto, reserving such sum as it may deem advisable for

payment of all its fees, compensation, costs and expenses and any other liabilities constituting a charge on or against the assets of the Custodial Account. The successor custodian shall thereafter be the Custodian under this Custodial Agreement.

- 9.5 The Custodian, Sponsor and Administrator shall not be responsible in any way, except as specifically provided herein, the purpose or propriety of any distribution, or any other action taken at the direction of the Employer, the Participant, or a Beneficiary.

Each Participant and Employer shall at all times fully indemnify and hold harmless the Custodian, Sponsor and Administrator, its successors and assigns, from any liability arising from distributions so made or actions taken at the direction of such Employer, Participant, or Beneficiary.

- 9.6 The Custodian's liability under this Agreement and matters which it contemplates shall be limited to matters arising from the Custodian's negligence or willful misconduct. To the extent permitted by applicable law, the Custodian and Sponsor shall be protected in acting upon any written order from the Employer or Participant or any other notice, request, Instruction or direction, consent certificate or other instrument or paper believed by it to be genuine and to have been properly executed, and, so long as it acts in good faith, in taking or omitting to take any other action. The Custodian and Sponsor may submit any question arising hereunder or in respect of the Account to counsel, including its own general counsel, and shall be protected to the extent permitted by applicable law, in acting on the advice of such counsel.

Subject to the provisions of applicable law, the Participant, his designated Beneficiary or the executor or administrator or either of these shall have the sole authority to enforce this Agreement on behalf of any and all persons having or claiming any interest in the Account by virtue of this Agreement. To protect the Account from expenses which might otherwise be incurred, it has been imposed as a condition to the acquisition of any interest in the Account, and it is hereby agreed, that subject to the provisions of applicable law, no person other than the Participant, his designated Beneficiary or personal representative, may institute or maintain any action or proceeding against the Custodian or Sponsor in the absence of a determination of a court of competent jurisdiction to the contrary.

- 9.7 Notwithstanding any contrary language elsewhere in this Custodial Agreement and pursuant to IRS Revenue Ruling 2007-71 and any subsequent guidance provided by the IRS, the Custodian shall be responsible for determining and administering certain orphan custodial agreements with respect to distributions and any other transactions that may arise under such accounts.

- 9.8 Fund Liquidation and Other Events Permitting Custodian Exercise of Administrative Discretion. In the event any asset or property held in the custodial account (or any asset or property previously subject to the operation of this section and administered by the Custodian) is redeemed or liquidated, matures, or is otherwise converted to cash or other property (a "Liquidation") for any reason or under any circumstances and the Custodian does not receive timely instructions designating what it should do with the proceeds of such Liquidation (the "Proceeds") from any person lawfully entitled to give instructions with respect to the account, including without limitation the registered owner of the custodial account ("Owner") and successors and representatives of the Owner, including beneficiaries, heirs, executors, and administrators, or other proper persons or entities, or instructions are received but they cannot reasonably or practicably be carried out as given or are ambiguous or unclear, the Owner expressly directs and authorizes the Custodian to take "Any Reasonable Course Of Conduct". "Any Reasonable Course Of Conduct" is hereby defined to mean a course of conduct that the Custodian determines to be reasonable under the circumstances -- this course of conduct may include any one or more of the following, but it is not limited to the following: (i) depositing Proceeds in an FDIC-insured bank account or any other account, or using Proceeds to purchase shares of a money market mutual fund or any other asset or property, (ii) distributing Proceeds to persons the Custodian reasonably determines to be lawfully entitled to distributions from the account, (iii) holding Proceeds uninvested in a general account of the Custodian or other depository; and (iv) resigning as Custodian and engaging in a course of conduct, including any described in clauses (i) through (iii), outright and free of trust, if the Owner does not appoint a Custodian which immediately accepts transfer of all Proceeds, although nothing in this clause (iv) shall be interpreted to obligate the Custodian to resign before taking any course of conduct, including any described in clauses (i) through (iii).

In the event any agreement or understanding (other than this custodial account agreement) pursuant to which or in consideration of which the Custodian serves as custodian of the Account is terminated (and is not renewed or replaced) and a successor custodian does not take custody of the account in connection with or following such termination, the Custodian, after not less than 30 days notice to the Owner or such other persons as the Custodian reasonably determines to be entitled to give instructions with respect to the account, may (i) take Any Reasonable Course Of Conduct with respect to any assets or property in the custodial account, any Proceeds or any asset or property previously subject to the operation of this section and still administered by the Custodian, and (ii) may reset custodial fees charged to and owed by the account owner to the Custodian to an amount equal to the costs of maintaining the account.

The Custodian is authorized to pay or recover any costs and expenses associated with taking Any Reasonable Course of Conduct by utilizing the assets, property or Proceeds involved or by retaining a portion of such in a reserve and subsequently distributing any unused portion of the reserve. To offset administrative costs of the Custodian under any of the above described circumstances not otherwise recovered the Custodian shall be entitled to retain for its own account any incidental benefits earned in connection with taking Any Reasonable Course of Action, including "float", bank service credits or overnight investment earnings.

The Custodian shall not be liable for any action taken in reliance on this section, unless such liability is required by the Internal Revenue Code or regulations implementing the Internal Revenue Code, and the Owner expressly waives and releases the Custodian from all such liability. Without limiting the generality of the foregoing, in the event the Custodian makes a distribution from the account to the persons it reasonably determines to be entitled to account distributions, the owner and such persons shall bear sole responsibility for any taxes, fines, assessments penalties, levies, tariffs, or other liabilities or consequences of any nature arising or resulting from the distribution, including non-monetary liabilities or consequences, and for taking any actions following the distribution to avoid or mitigate any liabilities or consequences.

This section shall not be interpreted so as to impose any duty of any nature on the Custodian if any one or more of the events described in this section occurs, whether a duty to take or omit to take any act in particular, to place Proceeds in any particular asset or property, to take possession of Proceeds if possession is discretionary, to exercise discretionary investment authority over the account, or to distribute Proceeds to the Owner. For purposes of clarification, it is the intention of this section to provide the Custodian with the broadest possible discretion permitted by law, including the discretion to hold Proceeds uninvested.

The Owner authorizes the Custodian to escheat or otherwise remit to appropriate jurisdictions in accordance with applicable abandoned property or other laws any assets or property in the custodial account, any Proceeds or any asset or property previously subject to the operation of this section and still

administered or held by the Custodian, and to the extent any of the foregoing consists of anything other than cash, the Custodian may escheat or remit the non-cash asset, property or Proceeds or the cash resulting from a liquidation of such non-cash asset, property or Proceeds.

The account owner acknowledges and accepts the risks of owning the account as described in this section, including the investment risks and tax consequences of the Custodian taking Any Reasonable Course Of Conduct.

## **SECTION 10. Reports and Returns**

**10.1** The Custodian shall:

- (a) maintain separate records of the interest of each Participant (or his designated Beneficiary(ies)) in the Custodial Account indicating (i) the earnings on such investments, (ii) the amounts and dates of all distributions and (iii) such other data as the Custodian deems useful in carrying out its duties hereunder;
- (b) shall send each Participant a written confirmation containing information with respect to the investment and the current status of the account; and
- (c) mail at least once during each calendar year a statement of all transactions in the Custodial Account during the preceding year and a statement showing the value of the assets held in the Custodial Account as of the end of such year. Upon the expiration of sixty days after such report or statement is rendered, the Sponsor and the Custodian shall be forever released and discharged from all liability and accountability to anyone with respect to transactions shown in or reflected by such report or statement except with respect to any such acts or transaction as to which the Participant shall have filed a written objection with the Custodian within such sixty-day period.

**10.2** The Custodian shall file such returns or reports with respect to the Custodial Account as are required to be filed by it under the Code and the Regulations thereunder, or by the Department of Labor, and the Employer and each Participant shall provide the Custodian with such information available to them as the Custodian may require to file such reports.

## **SECTION 11. Amendments and Termination**

**11.1** This Custodial Agreement may be amended by the Sponsor by submitting a copy of the amendment to the Participant. The Participant hereby delegates to the Sponsor the power to amend this Custodial Agreement and shall be deemed to have consented to any such amendment. Notwithstanding the above, no amendment shall be made by the Sponsor which shall cause or permit: (a) any part of the assets in the Account to be diverted to purposes other than for the exclusive benefit of the Participant or his Beneficiaries; or (b) except as may be permitted under section 13, any part of such assets to revert to or become the property of the Employer; or (c) any Participant, or his Beneficiary, to be deprived of any benefit to which he was entitled under the Account by reason of contributions made by the Employer prior to such amendment, unless such amendment is necessary either to conform the Account to, or to satisfy the condition of, any law, governmental regulation or ruling, or to permit the Account to meet the requirements of the Code; or (d) any responsibilities of the Custodian under the Agreement to be increased without its written consent.

**11.2** This Custodial Agreement shall terminate upon the complete distribution of the Custodial Account or in the event that a determination is made by the Internal Revenue Service that the Custodial Account does not satisfy the requirements of Section 401(f)(2) of the Code or that contributions thereto are not treated under Section 403(b)(7)(A) of the Code as contributed for annuity contracts. In event of termination as aforesaid, the balance in the Custodial Account shall be distributed to the Participants (or their respective surviving spouses or Beneficiaries, as the case may be) in accordance with their interests in the Custodial Account.

**11.3** If permitted under the Employer's 403(b) Plan, a distributable event shall also include Plan Termination by the Employer. The Employer by proper action has the right, at any time, to terminate the 403(b) Plan. However, if the Employer does not have any rights under the Individual Agreements including this Custodial Agreement, the Employer may not force the distribution to the assets in the Individual Agreements and termination of the 403(b) Plan may not occur. The Custodian shall not incur additional administrative responsibilities as a result of the 403(b) Plan termination unless specifically agreed to by the Custodian.

## **SECTION 12. Construction and Governing Law**

**12.1** **Conflicts With Employer's 403(b) Plan:** In the event of any conflict between the terms of the Employer's 403(b) Plan and the terms of this Custodial Agreement, the Plan provisions shall control except to the extent such provision increases the Custodian's duties or responsibilities hereunder, without the Custodian's prior written consent.

**12.2** The Custodial Account is established with the intention that it qualify as a Custodial Account under Section 401(f)(2) of the Code and that contributions thereto be treated under Section 403(b)(7)(A) of the Code as amounts contributed for annuity contracts, and the provisions of this Agreement shall be construed in accordance with such intention. This Agreement shall be governed by the laws of the State of Delaware where the Custodian resides, to the extent such laws are not preempted by the laws of the United States, and if applicable the provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

**12.3** The determination that any provision of this Agreement is not enforceable shall not affect the validity or enforceability of the remaining provisions of this Agreement. Unenforceable provisions shall be stricken or modified in accordance with such determination only as to such parties and this Agreement, as modified, shall continue to bind the specific parties involved therein and otherwise all other parties in unmodified form.

## SECTION 13. Arbitration

- 13.1 The Participant agrees that all controversies between the Participant and/or Beneficiaries and the Custodian and Sponsor (including their officers, directors, present or former employees) concerning or arising from (i) any retirement account(s) maintained with the Custodian; (ii) any transaction involving the Participant's account(s), whether or not such transaction occurred in such account(s); or (iii) the construction, performance, or breach of this Agreement, whether such controversy arose prior, on, or subsequent to the date hereof, shall be determined by arbitration under the commercial arbitration rules of the American Arbitration Association. Any disputes on the arbitrability of a matter or the manner of arbitration shall be determined in such arbitration. Arbitration shall be held in any state or federal court having jurisdiction over this Custodial Account.
- 13.2 Arbitration Disclosures: Arbitration is final and binding on the parties. The parties are waiving their right to seek remedies in court, including the right to jury trial. Pre-arbitration discovery is generally more limited than and different from court proceedings. The arbitrators' award is not required to include factual findings or legal reasoning, and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

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**FACTS****WHAT DOES BNY MELLON INVESTMENT SERVICING TRUST COMPANY DO WITH YOUR PERSONAL INFORMATION?****Why?**

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information.

Please read this notice carefully to understand what we do.

**What?**

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number
- Account balances
- Transaction history
- Account transactions
- Retirement assets

When you are no longer our customer, we continue to share your information as described in this notice.

**How?**

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons BNY Mellon Investment Servicing Trust Company chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does <b>BNY Mellon Investment Servicing Trust Company</b> share?	Can you limit this sharing?
For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes—to offer our products and services to you	No	No
For joint marketing with other financial companies	No	No
For our affiliates' everyday business purposes—information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes—information about your creditworthiness	No	No
For our affiliates to market to you	No	No
For nonaffiliates to market to you	No	No

**Questions?**

Call 855-649-0623

## Who we are

Who is providing this notice?

BNY Mellon Investment Servicing Trust Company, custodian for self-directed savings and retirement accounts, such as Individual Retirement Accounts, Qualified Plans and 403(b)(7) Plans, and for mutual fund Wrap Product and Global Cash Portal accounts

## What we do

How does **BNY Mellon Investment Servicing Trust Company** protect my personal information?

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.

How does **BNY Mellon Investment Servicing Trust Company** collect my personal information?

We collect your personal information, for example, when you

- Open an account or deposit funds
- Make deposits or withdrawals from your account
- Provide account information
- Give us your contact information
- Show your government-issued ID

We also collect your personal information from affiliates or other companies.

Why can't I limit all sharing?

Federal law gives you the right to limit only

- Sharing for affiliates' everyday business purposes—information about your creditworthiness
- Affiliates from using your information to market to you
- Sharing for nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing.

## Definitions

Affiliates

Companies related by common ownership or control. They can be financial and nonfinancial companies.

Nonaffiliates

Companies not related by common ownership or control. They can be financial and nonfinancial companies.

- **BNY Mellon Investment Servicing Trust Company** does not share information with nonaffiliates so they can market to you.

Joint marketing

A formal agreement between nonaffiliated financial companies that together market financial products or services to you.

- **BNY Mellon Investment Servicing Trust Company** doesn't jointly market.

## Other important information

This notice applies to individual consumers who are customers or former customers. This notice replaces all previous notices of our consumer privacy policy, and may be amended at any time. We will keep you informed of changes or amendments as required by law.